08 S.B.Civil Writ Petition No.3228/2004

Date of Order : 06-08-2004

HON'BLE MR. N.P.GUPTA,J.

Mr.R.S.Choudhary , for the petitioner.

Heard learned counsel for the petitioner and perused the impugned order.

The petitioner seeks to challenge the order of courts below whereby the receiver has been appointed over the land in dispute.

The case of the petitioner is, that the petitioner purchased the land by registered agreement dated 22.4.2001, and claims to be in exclusive possession thereof, for which he has spent money for development of land and also laboured physically. As against which, a perusal of Annex.1, shows that it is not a registered document, and does not bear any date, on which it was executed much less 22.4.2001, as pleaded in para no.2 of the writ petition. Rather in second para of the agreement, it was stipulated that a sum of Rs. 2.00 lacs will be paid on 31.3.2001. It obviously means that it must be executed prior to 31.3.2001 and endorsement purportedly appear on the back side of second page regarding some payments which have been made, are dated 7.6.01, 22.5.01 and 22.4.2001, and in none of these endorsements, there is any recital regarding any delivery of possession, while in the agreement, there is stipulation to deliver possession in future. Admittedly, the petitioner has not filed any suit for specific performance of this agreement. It is different story that, even if, period is calculated from 7.6.01, then that period of three years, has already run-out. Then the order for appointment of receiver is said to have been passed in the suit being Annex.2, which appears to have been filed on 26.7.99. Obviously, the stamps of Annex.1 was purchased on 30.11.2000, therefore, the suit in question is interior to the alleged agreement. Then the suit has been filed by Jain Pyau & Dharmshala, Mehrana through Prakash Chandra, son of Heera Lal Banthiya, Manager Trust Jain Pyau, Tehsil-Lunkaransar, Distt. Bikaner, while this plaintiff has not been impleaded as party respondents in the present writ petition, inasmuch as,

respondent has impleaded Sh. Prakash Chand S/o Sh. Heera lal, by caste Banthia, Manager, Trust Jain Paio, Tehsil-Loonkaransar, Distt. Bikaner.

Not only this, the order for appointment of Receiver by the trial court, is Annex.3 dated 8.11.2001, which recites that there has been in force a temporary injunction by the trial court, which is being flouted by present petitioner, and the court found no option except to appoint Receiver. In the entire writ petition, there is not even a whisper, as to whether any injunction was ever issued against the petitioner by the trial court , and as to how did he not flout that injunction?

Thus it appears that, the petitioner has suppressed the material fact from this court in the present writ petition. It is different story that from the facts, as appear from impugned order, it transpires that there is some dispute about the Public Trust created by founder of the Trust, and it also appears that there is some dispute between decedents of the founder, and taking advantage of that, the petitioner wants to take over the land, apprehending which, the suit was filed in the year 1999, then alleged agreement Annex.1 has been projected before this court, while even from the orders of the Revenue Appellate Authority, or even the Board of Revenue, there is not even an incling available about existence of any such agreement. It is also required to be noticed, that in absence of any valid sale-deed, and in absence of any suit for specific performance of Annex.1, as the things stand, it cannot be said that petitioner's any of the rights have been violated by appointment of Receiver. The writ petition, thus, has no force, and is hereby dismissed summarily.

(N.P.GUPTA),J.

Srawat/-